

# Notice of Allowability

Application No.

09/346,069

Examiner

Claire M. Kaufman

Applicant(s)

KEYT ET AL.

Art Unit

1646

## -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to the amendment filed 6/3/05.
2. ☒ The allowed claim(s) is/are 15,18,34-48 and 60-66.
3. ☐ The drawings filed on \_\_\_\_\_ are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☐ All   b) ☐ Some\*   c) ☐ None   of the:
    1. ☐ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
  6. ☒ CORRECTED DRAWINGS ( as "replacement sheets") must be submitted.
    - (a) ☒ including changes required by the Notice of Draftsperson's Patent Drawing Review ( PTO-948) attached
      - 1) ☐ hereto or 2) ☒ to Paper No./Mail Date 13 Mar 14, 2002.
    - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

### Attachment(s)

1. ☒ Notice of References Cited (PTO-892): copy of Paper #13
2. ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08),  
Paper No./Mail Date \_\_\_\_\_
4. ☐ Examiner's Comment Regarding Requirement for Deposit  
of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Interview Summary (PTO-413),  
Paper No./Mail Date \_\_\_\_\_
7. ☒ Examiner's Amendment/Comment
8. ☐ Examiner's Statement of Reasons for Allowance
9. ☐ Other \_\_\_\_\_

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*Attachment to Notice of Allowance*

**EXAMINER'S AMENDMENT**

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it **MUST** be submitted no later than the payment of the issue fee.

The application has been amended as follows:

The **Title** has been amended as follows:

~~NUCLEIC ACIDS ENCODING~~ VARIANTS OF VASCULAR ENDOTHELIAL CELL  
GROWTH FACTOR

*Terminal Disclaimer*

In a telephone call to Eric DeMaster on May 5, 2005, the Examiner requested a terminal disclaimer over US Patent 6,057,428 and US Application 09/546,857. The request was made because the instant application was subject to a nonobviousness-type double patenting rejection over claims to a VEGF variant with non-conservative substitution(s) in the FLT-1 or KDR kinase domain of patented parent US 6,057,428 and would likewise be subject to a nonobviousness-type double patenting rejection over VEGF variant claims of 09/546,857.

The terminal disclaimer filed on 6/3/05, disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of US Patent 6,057,428 or a patent granted for 09/546,857 has been reviewed and is accepted. The terminal disclaimer has been recorded.

*Prior Art*

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Potgens et al. (J. Biol. Chem., 1994) teaches a variant VEGF (also called VPF) in which the second through fifth cysteine residues are mutated to serine residues. While the fourth and fifth cysteines at positions 60 and 61 are clearly within the FLT-1 kinase region, the mutation of Cys to Ser is a conservative amino acid substitution and, therefore, the prior art

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VEGF variant does not meet the limitations of the instant claims. There is nothing in the prior art to motivate the artisan of ordinary skill to make a non-conservative substitution at one of the cysteines designated in the prior art.

*Examiner's Comment*

Table 1 (page 22) of the instant application exemplifies conservative substitutions, with substitutions not found in Table 1 considered non-conservative.

*Conclusion*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Claire M. Kaufman, whose telephone number is (571) 272-0873. Dr. Kaufman can generally be reached Monday, Tuesday and Thursday from 9:00AM to 3:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Caputa, can be reached at (571) 272-0829.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (571) 272-1600.

Official papers filed by fax should be directed to (571) 273-8300. NOTE: If applicant *does* submit a paper by fax, the original signed copy should be retained by the applicant or applicant's representative. NO DUPLICATE COPIES SHOULD BE SUBMITTED so as to avoid the processing of duplicate papers in the Office.

Claire M. Kaufman, Ph.D.



Patent Examiner, Art Unit 1646

June 28, 2005



LORRAINE SPECTOR  
PRIMARY EXAMINER